

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SCOTT BRUMETT,

Petitioner,

No. C 04-05423 JSW

v.

ANTHONY KANE, et al.,

Respondents.

**ORDER TO SHOW CAUSE RE  
SECOND AMENDED PETITION**

Petitioner Scott Brumett, who is in the custody of the California Department of Corrections, filed a second amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in the Superior Court of Los Angeles County of second degree murder, gross vehicular manslaughter while intoxicated, driving with a blood alcohol level in excess of 0.08% and causing injury to the victim, and driving when privilege suspended for prior convictions of driving under the influence. (*See* Petition at 14-15.) Venue is proper because Petitioner is currently incarcerated in Soledad, which is located in Monterey County. *See* Local Rule 2254-3.

The Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the grounds that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

A petition for writ of habeas corpus before the Second Appellate District of the California Court of Appeals was denied on September 9, 2004. The California Supreme Court denied review on December 1, 2004. This is Petitioner’s first federal habeas petition. This Court granted Respondent’s motion to dismiss the unexhausted claims and Petitioner filed a second amended petition on October 4, 2006.

1 A district court shall “award the writ or issue an order directing the respondent to show  
2 cause why the writ should not be granted, unless it appears from the application that the  
3 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is  
4 appropriate only where the allegations in the petition are vague or conclusory, palpably  
5 incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir.  
6 1990).

7 Petitioner does not challenge the validity of his underlying conviction or the resulting  
8 sentence. Rather, Petitioner seeks federal habeas corpus relief on the grounds that the Board of  
9 Prison Terms improperly concluded that Petitioner was unsuitable for parole in violation of the  
10 Due Process Clause and Equal Protection Clause of the 14th Amendment to the United States  
11 Constitution and in violation of the right to be free from cruel and unusual punishment in  
12 violation of the 8th Amendment. Liberally construed, the petition appears potentially colorable  
13 under 28 U.S.C. § 2254 and merits an answer from Respondents.

14 For the foregoing reasons and for good cause shown, it is HEREBY ORDERED that:

- 15 (1) Respondent shall file with the Court and serve on Petitioner, within 60 days from  
16 the date of this Order an answer conforming in all respects to Rule 5 of the Rules  
17 Governing Section 2254 Cases, showing cause why a writ of habeas corpus  
18 should not be issued. Respondent shall file with the answer and serve on  
19 Petitioner a copy of all portions of the administrative record that are relevant to a  
20 determination of the issues presented by the petition;
- 21 (2) If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
22 with the Court and serving it on Respondent within 30 days of his receipt of the  
23 answer.

24 **IT IS SO ORDERED.**

25 Dated: November 1, 2006

  
26 JEFFREY S. WHITE  
27 UNITED STATES DISTRICT JUDGE  
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